

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of )  
 )  
Grandfathered Short-Spaced ) MM Docket No. 96-120  
FM Stations ) RM-7651  
To: The Commission

COMMENTS

Media-Com, Inc. ("Media-Com"), licensee of WNIR, Kent, Ohio, hereby respectfully submits its comments in response to the Commission's Notice of Proposed Rule Making ("NRPM"), MM Docket No. 96-120, FCC 96-236 (released June 14, 1996). For the reasons set forth below, Media-Com supports the Commission's proposal to eliminate second- and third-adjacent-channel protection criteria which currently restrict opportunities for "pre-1964 grandfathered short-spaced stations" (hereafter referred to as "grandfathered stations") to improve service.

In support hereof, the following is shown:

1. Media-Com is the licensee of Class A FM Station WNIR, 100.1 MHz, Kent, Ohio. WNIR has provided FM service to the public since 1962 (formerly under the call sign WKNT), and has been under Media-Com's ownership for several decades. As WNIR is a grandfathered station, Media-Com is vitally interested in this proceeding.

No. of Copies rec'd  
List A B C D E

2. WNIR is grandfathered for short-spacing to third-adjacent channel Class B stations WGAR-FM, 99.5 MHz, Cleveland, Ohio, and WMMS, 100.7 MHz, Cleveland, Ohio, as a result of rule changes adopted in Docket 14185. First Report and Order, 33 FCC 309, 335-336 (1962); Fourth Report and Order ("Grandfather Order"), 40 FCC 868 (1964). WNIR's transmitter site is 44.22 km. from WGAR-FM and 38.20 km. from WMMS<sup>1/</sup>, whereas the rules presently require minimum spacings of no less than 65 km<sup>2/</sup>.

3. WNIR is located inside the 1 mV/m contour of third-adjacent-channel stations WGAR-FM and WMMS<sup>3/</sup>. The Grandfather Order adopted rules which generally prohibit a grandfathered station from any modification which would extend its 1 mV/m contour toward a short-spaced station. However, the Grandfather Order exempted grandfathered stations from compliance with the spacing requirements to second- and third-adjacent channel stations. Later, when the Commission eliminated this exemption, Second Report and Order ("Modification Order"), MM Docket 86-144, 2 FCC Rcd 5693

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<sup>1/</sup>See Engineering Statement attached hereto as Exhibit A.

<sup>2/</sup>Rule Section 73.207.

<sup>3/</sup>See Exhibit A hereto.

(1987), WNIR was frozen at its existing facilities. Under current Rule Section 73.213(a):

[Grandfathered pre-1964 short-spaced stations] may be modified or relocated provided that the predicted distance to the 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any short-spaced station. [Underlining added].

As WNIR is encompassed within the 1 mV/m contour of two short-spaced third-adjacent-channel stations, WNIR is absolutely barred from making any modification which would extend its 1 mV/m contour in any direction. WNIR is thus precluded from any modification which would achieve a net service increase, and from any site change absent directionalization or power reduction.

4. The second- and third-adjacent channel restrictions on grandfathered stations has not served the public interest. As a result of those restrictions, grandfathered stations have not only been foreclosed from implementing service improvements, but in some cases have been stymied from maintaining existing service levels under changing conditions.

5. The experiences of WNIR provide an example of how the second- and third-adjacent channel protection requirements have worked to the detriment of the listening public. A profound loss of WNIR service resulted from the commencement of service of a nearby co-channel station (hereafter

referred to as "the drop-in station") pursuant to BC Docket No. 80-90<sup>4/</sup>. The drop-in station overpowers WNIR's signal in areas where WNIR previously was received. At Exhibit B hereto are examples of unsolicited letters received shortly after the drop-in station commenced operation, from WNIR listeners who could no longer receive an adequate WNIR signal. Exhibit C is an example of a recent letter reflecting the continuing problem. Some of these letters are from listeners within WNIR's predicted 1 mV/m service contour. Indeed, some of these letters are from listeners within WNIR's 3.16 mV/m "principal community" contour! All of these letters are from listeners within WNIR's Arbitron Metro or TSA<sup>5/</sup>. As a result of WNIR's third-adjacent-channel obligations, WNIR cannot take steps to restore service to these former listeners.

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<sup>4/</sup>Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments, 100 FCC 2d 1332 (1985).

<sup>5/</sup>The Arbitron Company defines its survey markets by geographic area. WNIR is in an Arbitron "Metro" area comprised of Summit and Portage Counties. WNIR is in a Arbitron "TSA," or "Total Survey Area," comprised of Summit, Portage, Stark, Wayne, Medina, Ashland, Holmes and Tuscarawas Counties. The Commission has officially recognized the usefulness of statistical reports prepared by The Arbitron Company. See e.g. Revision of Radio Rules, 7 FCC Rcd 6387, 6397 (1992) ("... audience share is best measured with reference to Arbitron or similar independent survey information.")

6. This result is irreconcilable with long-standing case precedent which recognizes that the public interest is harmed when listeners "with a legitimate expectation of continued service, ... suddenly find that they no longer have access to 'the signal of an operating station that can be accessed today simply by turning on a ... radio set.'"

Eatonton and Sandy Springs, Georgia, 6 FCC Rcd 6580, 6586 (M.M.Bur., 1991), quoting Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7097 (1990).

7. WNIR likewise has been blocked by its third-adjacent-channel obligations from attempting to overcome service degradation resulting from local terrain obstacles, which cause shadowing of WNIR's signal, see Exhibit A hereto, and ducting problems caused by atmospheric conditions. See e.g. Exhibit D hereto, "Air takes FM stations out of area, Ducting alters radio audiences," The Akron Beacon Journal, July 1987.

8. WNIR's third-adjacent-channel obligations have also blocked WNIR from implementing needed service improvements. For example, WNIR has been unable to respond to local population shifts and freeway construction, which have changed local service needs. Indeed, WNIR is unable to effectively serve even some listeners within its 3.16 mV/m contour with its present coverage. See para. 5, supra. Needless to say,

WNIR has been prevented from implementing the 6 kW ERP found to best serve the public interest in MM Docket 88-375.

Amendment of Part 73 to Increase the Maximum Transmitting Power for Class A Stations, 4 FCC Rcd 6375 (1989), recon. granted in part, 6 FCC Rcd 3417 (1991)<sup>6/</sup>.

9. The impact of the third-adjacent-channel restrictions has been particularly detrimental to the public in the instant case, in view of the unique service WNIR provides in the area. WNIR is the only FM radio station in Northeastern Ohio that provides a 24-hour news-talk-information format. Of particular importance to the area has been WNIR's Emergency Broadcast System (EBS) participation, weather crisis coverage, and role as a coordinator with local sheriffs' offices and police departments, and the Red Cross, during such emergencies as train derailments, blizzards, and safety evacuations. See Exhibit F hereto<sup>7/</sup>. WNIR's inability to

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<sup>6/</sup>WNIR submitted comments in MM Docket No. 88-375 urging adoption of an across-the-board power increase for Class A FM stations to 6 kW regardless of spacing considerations, which was not adopted. WNIR's comments expressed concern that a policy permitting only some Class A stations to increase to 6 kW would detrimentally impact the coverage of those Class A stations remaining locked at 3 kW, which ultimately came to pass. A copy of those comments are attached hereto as Exhibit E.

<sup>7/</sup>The attached January 29, 1996 letter to WNIR from the Officer of the Commissioners, Portage County, particularly emphasizes the area-wide public need for local news and information in WNIR's TSA. The letter addresses an incident where gasoline was inadvertently mixed with kerosene at a local service station,

make modifications to address the service losses described above has severely reduced the extent of local information available in affected areas.

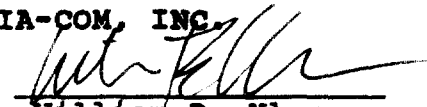
10. Based on these experiences, WNIR urges the Commission to delete the current second- and third-adjacent protection requirements as applied to grandfathered stations. The public interest will benefit by restoring to grandfathered stations the flexibility to implement modifications needed to best serve radio listeners.

WHEREFORE, the premises considered, Media-Com, Inc., respectfully requests the Commission to amend its rules in conformity with the NPRM.

Respectfully submitted,

MEDIA-COM, INC.

By

  
William B. Klaus  
Vice President

MEDIA-COM, INC.  
P.O. Box 2170  
Akron, Ohio 44309-2170  
(216) 673-2323

Dated: 7/18/96

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resulting in an immediate and potentially lethal crisis. Commissioner Keiper praised WNIR's service as saving lives of residents in the Metro as well as surrounding counties who travelled into the Metro to purchase what was subsequently found to be tainted fuel.

A



ENGINEERING STATEMENT  
IN SUPPORT OF COMMENTS

MM DOCKET 96-120

Media-Com, Inc.  
Kent, OH

July 16, 1996

Prepared for: Mr. William Klaus  
Media-Com, Inc.  
P. O. Box 2170  
Akron, OH 44309-2170

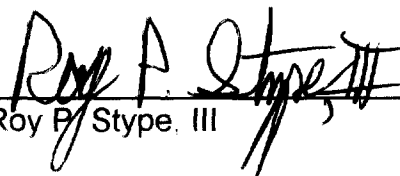
**CARL E. SMITH CONSULTING ENGINEERS**

ENGINEERING AFFIDAVIT

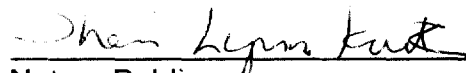
State of Ohio                                 )  
  ) ss:  
County of Summit                         )

Roy P. Stype, III, being duly sworn deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Media-Com, Inc., to prepare the attached "Engineering Statement In Support Of Comments - MM Docket 96-120."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on **July 16, 1996.**

  
\_\_\_\_\_  
Notary Public

SHERI LYNN KURTZ, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires June 14, 2000

/SEAL/

## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Media-Com, Inc., licensee of Radio Station WNIR(FM) - Kent, Ohio, in support of comments in MM Docket 96-120, which proposes to modify the protection requirements between pre-1964 grandfathered short spaced stations, as outlined in Section 73.213(a) of the FCC Rules. WNIR, which operates on FM Channel 261A, has pre-1964 grandfathered short spacings to two other FM stations:

WGAR-FM	Cleveland, OH	Channel 258B
WMMS	Cleveland, OH	Channel 264B

Section 73.207 of the FCC Rules requires a spacing of 69 kilometers between WNIR and both WGAR-FM and WMMS. The actual spacing from WNIR to WGAR-FM is only 42.22 kilometers, however, while that to WMMS is only 38.20 kilometers, resulting in the WNIR transmitter site being located within the 1 mV/m contour of both of these short spaced third adjacent channel stations. As a result of these short spacings, Section 73.213(a) of the FCC Rules presently precludes any modifications to the WNIR operating facilities which would extend its 1 mV/m contour beyond its present location in any direction. This restriction precludes WNIR from taking advantage of the higher power authorized for Class A stations in MM Docket 88-375 and also severely limits the ability to relocate the WNIR transmitter site without having to resort to the use of a directional antenna or a significant reduction in the station's operating facilities.

This restriction has needlessly impeded the ability of WNIR to respond to increased congestion and interference in the FM band which has resulted in a degradation of the WNIR service to the public. In particular, the addition of a new 6 kilowatt Class A station on a first adjacent channel has resulted in interference in areas where

WNIR formerly provided adequate service. As a result of localized terrain conditions, this interference occurs at some locations within the WNIR 3.16 mV/m city grade contour. Similar interference also occurs under inversion conditions, which are common in this area during certain times of the year, from a Class B station in Pennsylvania, which also operates on a first adjacent channel. As noted above, however, the short spacings to WGAR-FM and WMMS preclude WNIR from taking any steps to overcome this interference under the present FCC Rules.

The Notice Of Proposed Rulemaking in MM Docket 96-120 has proposed to make several modifications to the restrictions imposed on pre-1964 grandfathered short spaced stations by Section 73.213(a) of the FCC Rules. Among the proposed changes is the elimination of the restrictions presently imposed by this rule section on pre-1964 grandfathered short spacings on second and third adjacent channels. The adoption of this proposal would permit WNIR to improve its operating facilities up to the maximum permitted for a Class A station, which should permit the recovery of a portion of the service area which was lost to new stations which are able to operate with maximum Class A facilities, as well as making the WNIR signal less susceptible to interference during inversion conditions. This could be accomplished with very little, if any, interference impact to WGAR-FM and WMMS. Due to the third adjacent channel relationship to these short spaced stations, any additional interference which might result to these stations from such an increase in facilities by WNIR would be limited to an extremely small area in the immediate vicinity of the WNIR transmitter site. The actual extent of this interference would be a function of the quality of the receiver involved. On higher quality receivers with good selectivity, it appears unlikely that any perceptible interference to either of these short spaced stations would occur, even if WNIR

were to operate with maximum Class A facilities. This potential for a slight increase in interference is more than outweighed by the improvements in interference free service for WNIR which would be possible if the restrictions on pre-1964 grandfathered short spaced stations on second and third adjacent channels are relaxed as proposed in this proceeding.

In summary, the proposal to relax the present restrictions imposed on pre-1964 grandfathered short spaced stations on second and third adjacent channels will serve the public interest by providing stations in similar situations to that of WNIR the flexibility to modify and/or improve their operating facilities to overcome interference problems which have occurred as a result of increasing congestion in the FM band. Because of the nature of interference between second and third adjacent channel stations, this can be accomplished with very little potential for increased interference to the short spaced stations.

B

May 4, 1990

Dear Sir:

WTKR is really being invaded in this area and we don't like it!! We have listened to the WTKR Station for years and like Howie and Joe and the dating show. We need the talk shows over the media. Please can't the FCC do anything about this invasion?

People should be able to voice themselves in these times and where can this be done other than on WTKR -

Sincerely  
The Robert A. Amato

*Wine and Roses*  
FLORIST and GIFT SHOPPE  
290 West Ave. Suite 1, Tallmadge, Ohio 44278  
(216) 633-1144

May 4, 1990

H. N. G. R.  
2449 S.R. 59  
Kent, Ohio 44240

Dear Mr. Klaus:

Here we are at Wine & Roses Florist doing our work, our radio is on H. N. G. R. 24 hours a day, and here lately we cannot hear you, cause of some hillbilly station interfering on H. N. G. R. Do something about this situation, or report it to the F.C.C. Thank you and love your programs.

Sincerely,  
Wine & Roses Florist  
L. June Smith,  
Owner

P.S. Tell  
Janet to stop  
in and see  
us! We love  
her.



5-8-90

Bill Keane, Gen. Mgr. W.N.I.R.

To whom it may concern,

Please count me in as  
being unhappy about our  
radio reception. My

radio is always tuned  
to W.N.I.R. from 5:30  
A.M. to at least 7:00 P.M.

Star, Hour and especially  
Joe add to my day.

We are located just  
north of North Canton and  
lately, most times I have  
to give up and turn off my  
radio. I don't waste my  
time on any other station.

Please take action and force  
the (other station?) to correct  
their tower or whatever.

Thank you  
E. du Haas

5/5/90

DEAR KAISER Broadcasting

THIS SHORT NOTE, IS REFERENCE THE INTERFERENCE I'M HAVING WITH MY RECEPTION OF KNIR 100.1 FM. I LIVE IN SOUTHERN SUMMIT COUNTY AND AM RECEIVING MORE INTERFERENCE, SOME MUSIC OVER RIDING, AND SHORT INTERVALS OF COMPLETE SILENCE. I NEVER HAD THIS PROBLEM BEFORE, WHAT'S GOING ON?

ALSO TELL HOWIE TO KEEP UP THE GOOD WORK, AND TO TELL IT LIKE IT IS;

A LOYAL LISTENER  
10 AM TO 300 PM

R. A. IDE

P.S. IS THIS THE LIBERALS TRYING TO SILENCE  
A GOOD AMERICAN (HOWIE) ONLY KIDDING

May 4, 1990

Mr. Bill Klaus  
General Manager  
WNIR RADIO

Dear Sir:

For several years I have listened to your station and I do enjoy it. I work north of Canton and I listen all day at work.

Much to my chagrin, as soon as I reach 30th Street in Canton, there is interference (almost constant) from a radio station south of Canton. Since I live about a mile south of 30th Street, I am unable to hear your station.

Needless to say, I am very upset, annoyed, provoked, disappointed, and unhappy about this. I hope there is something you can do to remedy this situation. I'm sure I am only one of many in Canton who are unable to hear your station.

Thank you for your consideration.

Sincerely,

*R. W. Richards*

Mrs. R. W. Richards  
1252 Perkins Ave. N.W.  
Canton, Ohio 44703

May 8, 1990

Mr. William Klaus  
WNIR  
P. O. Box 2170  
Akron, OH 44309

Dear Mr. Klaus,

My husband and I enjoy listening to your radio station most of the day and find it very entertaining. However; some days the reception doesn't come in as clear as we would like it. I understand that weather does have a great deal to do with the reception, especially when it is raining or mostly cloudly. Sometimes we get interference from another radio station, a country/western one.

If there is anything you could do to correct this problem, we would very much appreciate it.

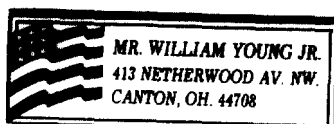
As I have stated, we not only enjoy listening to your station finding it quite entertaining but also most informative.

Thank you for whatever help you can give at this time.

Sincerely,

*Mrs. William Young*

Mrs. William Young



5/22/90

Dear Mr. Klaus

I am a long time listener to your radio station W N I R. The last few weeks I have been unable to tune it in I live in the North West section of Canton, Ohio. I do hope this is a temporary problem as I am just lost without W N I R and especially 10 am who seems like an old friend to me. I like music but do not want to hear it all day long and that is about all that is on other stations. Your station is so informative and I really miss that. I do hope the problem can be solved and I can listen again to my friends at W N I R.

Sincerely,

Joan Armentrout

1609 Oxford N.W. Canton, Ohio 44703

Attention: Bill Klaus 5-12-90

Here in Canton there is a  
Country-Western Radio Station  
wiping you off the air - Under-  
stand it is located in Truck-  
ville, Ok. I also get a flip intef-  
erence.

Janet Cape III  
1912 Cleveland Ave. N.W.  
Canton, OH 44703 - 3137

Dear Sir:

5-3-90

This week your station is taken over by the power of some close more powerful signals that is drowning you out with music.

We live near the monument in Canton - When are you going to have a stronger signal? Up to now your station was coming in good. We miss Joe's programs - Mrs M.

**VENTOLIN<sup>®</sup>**  
(ALBUTEROL, USP/  
ALBUTEROL SULFATE, USP)

5-21-90

To: Bill Klause

I live in the  
Berry Hgts area, between  
Canton and Massillon.

Your being stepped on  
by the station in Trichsville.  
Trust you can remedy  
this situation to regain your  
vast audience in this  
area.

A loyal listener  
for many years.

WAYNE WILHELM  
1400 - ELWOOD S.W.  
CANTON OHIO  
44710



May 7, 1990

Mr Bill Klaus  
WNIR  
Box 2170  
Akron, Ohio 44309

Dear Mr Klaus.

For several years I have  
enjoyed WNIR. I live in  
Narare, Ohio but have listened  
while shopping both in Massillon  
& Beldon Village, Canton.

Recently your signals have  
been blocked out almost  
completely by a new station WTVZ.  
Though I understand that station  
has a night to breakfast over  
99.9 I do not like it abetting

WNIR 100.1

I do hope something  
can be done.



Sincerely  
Mary Lou Snyder  
4750 Shepherd Church  
Narare, Ohio 44662